IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4983 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE **Sd/-**
HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISMAILBHAI SHAIKH - Petitioner(s)
Versus
COMMISSIONER & 4 - Respondent(s)

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Appearance :
MR YM THAKKAR for Petitioner(s) : 1,
MR UDAY BHATT, Ld. AGP for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 07/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. The petitioner is a partner of a partnership firm running Yamuna talkies and is aggrieved by a

communication dated 2nd July, 1991 addressed to him by respondent No.3- Mamlatdar, Kapadvanj, whereby the petitioner has been called upon to pay entertainment tax of Rs. 64,153.95 ps.

2. The facts giving rise to the present petition, in nutshell, are as under:

2.1. On 1st September, 1991, respondent No.2 had visited the theatre managed by the petitioner and respondent No.2 found that several irregularities had been committed by the firm managing the said theatre. It was found that certain duplicate tickets had been issued, so as to avoid payment of entertainment tax to the State of Gujarat. It was also, *inter alia,* found that the accounts were not maintained properly. For the aforesaid reasons, a show cause notice dated 12.9.1988 was served upon the petitioner by respondent No.2, which was replied to by the petitioner by denying all the allegations levelled in the show cause notice.

2.2. After considering the reply, respondent No.2 came to the conclusion that irregularities alleged in the show cause notice had been committed by the petitioner and, therefore, order dated 10.10.1988 (Annexure-”B”) had been passed, whereby, in all, a sum of Rs. 62,153.65 ps. was sought to be recovered from the petitioner by way of entertainment tax and

fine. Against the order of respondent No.2, the petitioner had preferred an appeal before respondent No.3. After considering the submissions made by the petitioner, respondent No.3 had dismissed the appeal by his order dated 8.2.1989.

2.3. Being aggrieved by the order passed by the Appellate Authority, the petitioner had filed revision application before the Commissioner of Entertainment Tax, Gujarat State. The said revision application had also been rejected by an order dated 21st August, 1989. Thus, the Appellate Authority as well as the Revisional Authority had confirmed the order passed by the Deputy Commissioner of Entertainment Tax.

2.4. Being aggrieved by the order passed in the revision application, the petitioner had approached this Court by filing Special Civil Application No. 5761 of 1990. For the reasons best known to the petitioner, the petition was withdrawn, so as to make a representation before the State of Gujarat on the subject matter of the petition. According to the case of the petitioner, he did not receive any communication from the State of Gujarat, but received a letter dated 2nd July, 1991 from the Mamlatdar, Kapadvanj giving intimation to the petitioner that the State of Gujarat had turned down the representation made by the petitioner

under its letter dated 7.1.1991 and, therefore, the petitioner was called upon to pay entertainment tax as well as the amount of fine as finally confirmed by the Commissioner of Entertainment Tax, State of Gujarat in the revision application.

2.5. Being aggrieved by the said communication, the petitioner has filed this petition with a prayer that the said demand made by the Mamlatdar be quashed.

3. Learned advocate Shri Yogesh Thakkar has appeared for the petitioner and learned A.G.P. Shri Uday Bhatt has appeared for the respondent authorities.

4. We have heard the learned advocates and have also gone through the impugned orders passed by the Deputy Commissioner of Entertainment Tax as well as the Commissioner of Entertainment Tax, State of Gujarat. Upon perusal of the said orders, we find that the petitioner had issued duplicate tickets and thereby he had made an effort to avoid payment of entertainment tax. It is also clear that the accounts with regard to the sale of tickets had not been properly maintained and thereby certain irregularities had been committed with an oblique motive to avoid payment of tax.

5. It is pertinent to note that there are concurrent findings of fact and even when the petitioner filed Special Civil Application No. 5761 of 1990 before this Court, possibly, this Court might not be inclined to entertain that petition and, therefore, the petitioner had withdrawn the petition so as to make a representation to the State of Gujarat. The State of Gujarat did not think it proper to disturb the findings arrived at by the authorities and, therefore, the representation had been turned down.

6. The Mamlatdar, Kapadvanj has raised the demand only in pursuance of the decision taken by the Government on the representation made by the petitioner. The said decision had been taken on 7.1.1991. The petitioner has not challenged the said decision in the petition. It has been submitted by the learned advocate, appearing for the petitioner, that the order dated 7.1.1991 passed by the Government on his representation had never been communicated to the petitioner. The said fact has been denied by the learned AGP. Be that as it may, the petitioner could have demanded a copy of the said decision, if, in fact, the petitioner had not received the same from the Government, if the petitioner was inclined to challenge validity of the said order. We do not go into the said question as the petitioner has not challenged validity of the

said order.

7. In view of the fact that the disputed questions of fact are involved in the petition and as the impugned orders had attained finality, because the petitioner had withdrawn his earlier petition, in our opinion, there is no substance in the petition. The petition is, therefore, dismissed. Ad-interim relief granted earlier stands vacated. Rule is discharged with no order as to costs.

Sd/- Sd/-

(ANIL. R. DAVE, J.) (HARSHA DEVANI,J.)

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